

MCNENNY v. LOS ANGELES CHINATOWN BUSINESS COUNCIL

Case Number: BS174784

Hearing Date: July 24, 2019

[Tentative] ORDER GRANTING PETITION FOR WRIT OF MANDATE

Petitioners Katherine McNenny and Adrian Riskin (Petitioners) seek a writ of mandate under Code of Civil Procedure section 1085 and the California Public Records Act (CPRA) (Government Code sections 6250 et seq.) ordering Respondent Los Angeles Chinatown Business Council (Respondent BID) to produce documents pursuant to Petitioners' CPRA requests.

No opposition was filed.

The Petition is GRANTED.

STATEMENT OF THE CASE

On May 28, 2017, Petitioner McNenny submitted a CPRA request to Respondent BID, requesting two categories of records dated from January 1, 2017 to May 28, 2017: (1) all BID emails which contained an enumerated list of keywords related to the Skid Row Neighborhood Council election, and (2) all BID emails to and/or from certain named individuals involved in the Skid Row Neighborhood Council election. (Verified Pet., ¶ 13.) Respondent BID did not respond to Petitioner McNenny's request within 10 days with a determination of disclosability and an estimated date of production, as required by Government Code section 6253, subdivision (c). (Verified Pet., ¶ 13.) In fact, Petitioner received no response at all. (Verified Pet., ¶ 14.)

On March 23, 2018, Petitioner Riskin submitted a CPRA request to Respondent BID, requesting emails dated from January 1, 2017 through the date of the BID's compliance with the request that (1) were sent to/from/cc/bcc the BID's board or staff and various named individuals and domain names, and (2) were in possession of anyone on the BID's staff or board and contained the word "Skid." (Verified Pet., ¶ 20.) Respondent BID did not respond to Petitioner Riskin's request within 10 days with a determination of disclosability and an estimated date of production, as required by Government Code section 6253, subdivision (c). (Verified Pet., ¶ 20.) In fact, like Petitioner McNenny, Petitioner Riskin received no response at all. (Verified Pet., ¶ 21.)

On March 31, 2018, Petitioner Riskin submitted a second CPRA request to Respondent BID, seeking all emails between anyone on Respondent BID's board or staff and the email address michaelkfong@gmail.com that were dated from January 1, 2015 through the date of the BID's compliance with the request. (Verified Pet., ¶ 22.) Again, Respondent Bid provided no response at all. (Verified Pet., ¶¶ 22-23.)

STANDARD OF REVIEW

Code of Civil Procedure section 1085, subdivision (a) provides in relevant part:

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person."

"There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (*California Ass'n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 704.) "Generally, a writ will lie when there is no plain, speedy, and adequate alternative remedy" (*Pomona Police Officers' Ass'n v. City of Pomona*, (1997) 58 Cal.App.4th 578, 583-84.)

"When there is review of an administrative decision pursuant to Code of Civil Procedure section 1085, courts apply the following standard of review: '[J]udicial review is limited to an examination of the proceedings before the [agency] to determine whether [its] action has been arbitrary, capricious, or entirely lacking in evidentiary support, or whether [it] has failed to follow the procedure and give the notices required by law.' [Citations.]" (*Pomona Police Officers' Ass'n, supra*, 58 Cal.App.4th at 584)

ANALYSIS

Petitioners request the court grant their Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief under the CPRA.

Pursuant to the CPRA (Government Code section 6250, *et seq.*), individual citizens have a right to access government records. In enacting the CPRA, the California Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code, § 6250; see also *County of Los Angeles v. Superior Court*, (2012) 211 Cal.App.4th 57, 63.) Government Code section 6253, subdivision (b) states:

"Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of

duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so."

(Gov. Code § 6253, subd. (b).)

On July 3, 2019, the court granted Petitioners' Motion to Compel Respondent's verified responses to interrogatories, special interrogatories, and requests for production of documents, and for truth of matters in requests for admission to be deemed admitted. (Supp. Brief, Exs. A-B.) The motion was unopposed.

Based on the court granting Petitioner's motion to have the admissions deemed admitted, Respondent BID has now admitted that "all of the records that Petitioners requested are not properly subject to any of the exemptions under California Government Code § 6254." (Supp. Brief, Exs. A-B [RFA No. 14].)

CPRA establishes a basic rule requiring disclosure of public records upon request. (Gov. Code § 6253.) In general, it creates "a presumptive right of access to any record created or maintained by a public agency that relates in any way to the business of the public agency." (*Sander v. State Bar of California* (2013) 58 Cal.4th 300, 323.) Therefore, every such record "must be disclosed unless a statutory exception is shown." (*Sander v. State Bar of California, supra*, 58 Cal.4th at 323.)

Respondent BID has not submitted any opposition or otherwise justified withholding the requested CPRA documents by asserting that any exemption applies.

CONCLUSION

Based on the foregoing, the petition is GRANTED.

IT IS SO ORDERED.

July 24, 2019

Hon. Mitchell Beckloff
Judge of the Superior Court